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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

IN RE DRAFTKINGS INC. DERIVATIVE
LITIGATION

Lead Case No. 3:21-cv-00453-MMD-CLB

This Document Relates to:

ALL ACTIONS

**STIPULATION AND ORDER
VOLUNTARILY DISMISSING
ACTION WITHOUT PREJUDICE**

WHEREAS, on July 2, 2021, a putative federal securities class action, captioned *In re DraftKings Inc. Securities Litigation*, No. 1:21-cv-05739, was filed in the U.S. District Court for the Southern District of New York (the “Federal Court”), asserting claims under federal securities laws against DraftKings Inc. (“DraftKings” or the “Company”) and certain of its current and former officers and directors (the “Securities Class Action”);

WHEREAS, on October 21, 2021, and January 6, 2022, two factually related stockholder derivative actions were filed in this Court by plaintiffs Jordan John Walk and Jiahan Yu (together, “Plaintiffs”), on behalf of DraftKings, which actions were subsequently consolidated on February 18, 2022, under the caption *In re DraftKings Inc. Derivative Litigation* (Lead Case No. 3:21-cv-00453-MMD-CLB) (the “Derivative Action”);

WHEREAS, Plaintiffs in this Derivative Action assert breach of fiduciary duty and related claims on behalf of DraftKings, as a nominal defendant, against certain of the Company’s current and/or former directors and officers (collectively, “Defendants,” and, together with Plaintiffs, the

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1 “Parties”), based on allegations that overlap with the facts and circumstances alleged in the Securities
2 Class Action, including the relevance of many of the same documents and witnesses;

3 WHEREAS, in the interest of judicial efficiency and given the important implications that the
4 then-pending motion to dismiss in the Securities Class Action could have for this Derivative Action,
5 the Parties stipulated to stay this Derivative Action until either the Securities Class Action had been
6 dismissed with prejudice and any and all appeals thereto have been exhausted or the motion to dismiss
7 was denied in whole or in part, *see* April 21, 2022 Stipulation and Order to Stay the Derivative Action
8 (the “Stay Order”);

9 WHEREAS, on January 10, 2023, the Federal Court entered an order granting defendants’
10 motion to dismiss the Securities Class Action in its entirety, dismissing the case with prejudice and
11 entering judgment in defendants’ favor, *see In re DraftKings Inc. Sec. Litig.*, 2023 WL 145591
12 (S.D.N.Y. Jan. 10, 2023);

13 WHEREAS, plaintiffs in the Securities Class Action did not file an appeal from the dismissal
14 order;

15 WHEREAS, following the dismissal of the Securities Class Action, and in accordance with the
16 Stay Order, the Parties met and conferred regarding the impact of the dismissal and further proceedings
17 in this Derivative Action;

18 WHEREAS, the Parties now stipulate to the voluntary dismissal of this Derivative Action
19 without prejudice, with each side to bear its own costs and fees; and

20 WHEREAS, the Parties respectfully submit that notice of said dismissal under Federal Rule of
21 Civil Procedure 23.1(c) is unnecessary to protect the interests of the Company’s stockholders because:
22 (i) the dismissal is sought without prejudice; (ii) there has been no settlement or compromise between
23 the Parties nor attempts to seek such; (iii) there has been no collusion among the Parties; (iv) neither
24 Plaintiffs nor their counsel have received or will receive any consideration from Defendants for the
25 dismissal; and (v) Defendants will not suffer any prejudice as they do not oppose this voluntary
26 dismissal;

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NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by the Parties, through their undersigned counsel, pursuant to Rules 23.1 and 41(a) of the Federal Rules of Civil Procedure and subject to Court approval, as follows:

1. This Derivative Action is dismissed in its entirety without prejudice;
2. Each party shall bear its own costs, fees, and expenses, including attorneys' fees; and
3. For the reasons noted above, notice of this dismissal to DraftKings stockholders is not required.

Respectfully submitted this 3rd day of March 2023.

/s/ Matthew L. Sharp
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Co-Lead Counsel for Plaintiffs

IT IS SO ORDERED.


UNITED STATES DISTRICT JUDGE

DATED: March 3, 2023